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8 Attorneys for Plaintiff

9 **UNITED STATES DISTRICT COURT**

10 **DISTRICT OF NEVADA**

11 MELINDA ELLIS, individually and on behalf of all ) CASE NO. 3:09-cv-00428-LRH-WGC  
12 other similarly situated )  
13 )  
14 Plaintiff, ) **PLAINTIFF'S BRIEF REGARDING**  
15 vs. ) **DAMAGES UNDER THE FAIR**  
16 ) **DEBT COLLECTION PRACTICES**  
17 ) **ACT**

18 ALESSI TRUSTEE CORPORATION; DAVID )  
19 ANTHONY ALESSI; and ALESSI & KOENIG, )  
20 LLC.; and DOES I through XX, )  
21 )  
22 )  
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18 Plaintiff MELINDA ELLIS ("Plaintiff"), by and through her attorneys, THE  
19 BOURASSA LAW GROUP, LLC, by Mark J. Bourassa, Esq. and Trent L. Richards, Esq.,  
20 hereby submits the following Brief Regarding Damages Under the Fair Debt Collection  
21 Practices Act pursuant to the Court's Order Minute Order dated June 3, 2014.

22 **I. Summary Of Facts.**

23 Plaintiff is the owner of two properties in Reno, Nevada, one located at 1200 Broken  
24 Feather Court, and the other located at 5835 Flowering Sage Trail. In 2007 and early 2008,  
25 Plaintiff fell behind on her monthly assessment dues owed to Arrowcreek Homeowners  
26  
27

1 Association (“Arrowcreek”) with respect to both properties due to financial problems. As a  
 2 result, Plaintiff was contacted by Alessi Trustee Corporation (“ATC”) (and later, their successor,  
 3 Alessi & Koenig, LLC (“Alessi”)), who sought to collect the allegedly outstanding amounts on  
 4 Arrowcreek’s behalf. *See Exhibit 1* at AC 002, 006, 0057, 0058, 0063, 0086 and 00117.  
 5 However, the communications failed to disclose that ATC is a debt collector collecting a debt as  
 6 required by the Fair Debt Collection Practices Act (“FDCPA”). *Id.* Moreover, ATC was not  
 7 licensed as a debt collection agency under Nevada law. *See Exhibit 2.*

8       In June 2007, ATC recorded liens on Plaintiff’s properties on behalf of Arrowhead.<sup>1</sup>  
 9 Thereafter, on May 21, 2008, Plaintiff filed a complaint seeking damages against ATC and  
 10 Alessi.<sup>2</sup> However, on November 24, 2008, Arrowcreek, through Alessi, again filed Notices of  
 11 Delinquent Assessment (Lien) with respect to each of Plaintiff’s properties. *See Exhibit 5.* The  
 12 November 2008 liens remain on Plaintiff’s properties.

13       On July 15, 2009, Plaintiff filed an amended complaint alleging three causes of action  
 14 against ATC and Alessi relating to their unlawful collection activities: (1) breach of fiduciary  
 15 duty; (2) violation of the FDCPA; and (3) civil racketeering. *See Exhibit 6.* In essence, Plaintiff  
 16 contends that ATC and Alessi violated the FDCPA by failing to disclose in its lien letters that it  
 17 is a debt collector. Plaintiff also contends that ATC and Alessi engaged in a scheme to collect  
 18 “kickbacks” in the form of “audit fees” in violation of NRS 116.31185, which is a breach of  
 19 fiduciary duty and constitutes racketeering activity in violation of NRS 207.360. *Id.* Plaintiff  
 20 also contends that Defendants unlawfully applied her payments to their fees and charges rather  
 21 than to assessments owed. *See NAC 116A.345(7).*

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 24  
 25<sup>1</sup> These liens were released in December 2008.  
 26<sup>2</sup> Plaintiff also initially sued Arrowcreek, however, the Court lacked granted Arrowcreek’s Motion to Dismiss the  
 27 claims against Arrowcreek on the grounds that the court lacked jurisdiction to hear the claims against Arrowcreek  
 3. Plaintiff has since arbitrated these claims pursuant to NRS 38.310. *See Exhibit 4.*

1 Plaintiff subsequently filed a motion for partial summary judgment on her claims. *See*  
 2 Doc. #118. On June 7, 2013, the Court granted Plaintiff's motion in part, holding that ATC and  
 3 Alessi's lien letters constituted communications in connection with collection of a consumer  
 4 debt, and because the communications did not contain the disclosures required by 15 U.S.C.  
 5 section 1692e(11), Defendants violated the FDCPA. *See* Doc. #141. The Court also entered  
 6 judgment in favor of Plaintiff with respect to her FDCPA claim. *Id.*

7 **II. Analysis.**

8 **A. Damages Under the FDCPA.**

9 Plaintiff seeks an award of damages under the FDCPA. The FDCPA, 15 U.S.C. section  
 10 1692k provides, in pertinent part, that

12 any debt collector who fails to comply with any provision of this  
 13 subchapter with respect to any person is liable to such person in an  
 14 amount equal to the sum of--  
 15 (1) any actual damage sustained by such person as a result of such  
 16 failure;  
 17 (2)(A) in the case of any action by an individual, such additional  
 18 damages as the court may allow, but not exceeding \$1,000....

19 Section 1692k also provides for an award of attorney fees and costs to a prevailing plaintiff. 15  
 20 U.S.C. § 1692k(a)(3). As it has already been determined that Alessi and ATC failed to comply  
 21 with 15 U.S.C. § 1692e(11), the only thing remaining is to determine the amount of damages  
 22 Plaintiff is owed as a result of this violation.

23 **1. Actual Damages.**

24 As this Court has ruled, ATC was operating as an unlicensed collection agency in  
 25 sending out its non-compliant collection letters, and it was therefore not authorized to collect  
 26 assessments on behalf of Arrowcreek *or* initiate the judicial foreclosure process. Plaintiff has  
 27 significant actual damages as a result of this unlawful collection activity; namely, Plaintiff has

been unable to sell her properties. In 2008, according to the Washoe County Assessor, the Flowering Sage property was worth approximately \$351,000.00. *See Exhibit 7.* It has been on the market since 2007 but has not sold,<sup>3</sup> and is now worth only \$104,630.00. *Id.* The Broken Feather property was worth approximately \$813,313.00 in 2008 according to the Washoe County Assessor. *See Exhibit 8.* The Broken Feather property has been on and off the market since that time, and is now worth only \$557,277.00. *Id.* Thus, Plaintiff has approximately \$502,406.00 in lost profits.

## 2. Statutory Damages.

Plaintiff is also entitled to an award of statutory damages up to \$1,000. 15 U.S.C. section 1692k provides that, in determining the amount of statutory damages to award, the court “shall consider, among other relevant factors...the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, and the extent to which such noncompliance was intentional.” Here, the facts demonstrate that Plaintiff should be awarded the maximum statutory damages.

Defendants' noncompliance was frequent and intentional, as Defendants sent Plaintiff at least seven letters to Plaintiff demanding payment of the alleged assessments. *See Exhibit 1* at AC 002, 006, 0057, 0058, 0063, 0086 and 00117. This is not the case where the required language was erroneously left off of a communication; ***none*** of these communications contain the disclosure required by 15 U.S.C. section 1692e(11). Moreover, as ATC was operating as an unlicensed collection agency in sending out these non-compliant letters, its actions were grossly misleading. *Id.*; ***Exhibit 2***; Doc. No. 115. These factors mitigate in favor of a full statutory damage award.

### 3. Attorney Fees.

<sup>3</sup> Plaintiff was previously unable to sell her properties due to the now-released June 2007 liens.

1 Plaintiff has also incurred attorney fees and costs prosecuting her claims, both to The  
2 Bourassa Law Group, LLC and her previous counsel. Counsel will timely file a Motion for an  
3 award of these fees, as well as a bill of costs, at the conclusion of this matter.

4 **III. Conclusion.**

5 As set forth above, Plaintiff requests that the Court award her \$503,406.00 as a result of  
6 Defendants' FDCPA violations, representing her actual damages and statutory damages.  
7 Plaintiff should also recover her reasonable attorney fees and costs.  
8

9 Dated the 12th day of June 2014.

10 **THE BOURASSA LAW GROUP, LLC**

11  
12 s/s Mark J. Bourassa, Esq.  
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**CERTIFICATE OF SERVICE**

2  
The undersigned hereby certifies that the foregoing **PLAINTIFF'S BRIEF**  
3  
**REGARDING DAMAGES UNDER THE FAIR DEBT COLLECTION PRACTICES**  
4  
**ACT** was electronically filed this 12th day of June, 2014, and is available for viewing and  
5  
downloading from the ECF System of the United States District Court for the District of  
6  
Nevada.

7  
The undersigned further certifies that a true and correct copy of the foregoing document  
8  
was served by mailing a copy thereof, first class mail, postage prepaid, this 12th day of June  
9  
2014 as follows:

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*s/s Hilary Steward*  
An employee of  
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